86-65

Supreme Court, U.S.
FILED
JUL 21 1986
JOSEPH F. SPANIOL, JR.
CLERK

NO.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

RICHARD J. McDONALD, Petitioner,

v.

ROSCOE L. EGGER JR., Commissioner of the Department of Internal Revenue; and
LOCKHEED CORPORATION (AKA)
Lockheed California Company
Respondents

PETITION FOR WRIT OF CERTIORARI

TO THE

THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RICHARD J. McDONALD
6754 Clybourn #204
North Hollywood, Ca. 91606
Tel. (818) 761-7697
IN PROPRIA PERSONA

QUESTION PRESENTED FOR REVIEW

Whether the Legislative Branch with the permission of the Executive Branch, may consistant with Constitution delibrately utilize entrapment, deception, coercion, non-disclosure, misrepresentation, undue influence and deceit to force an involuntary change of status by legislative fiat, that in effect deprives the petitioner of his natural and fundamental rights and property for the purpose of raising a revenue and relief cannot and will not be granted by the courts in order to maintain "titles of nobility"?

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This Petition is an opportunity for this court to reestablish the constitutional concepts of liberty that was instituted by our founding fathers, void the use of constructive fraud that is slowly destroying the American way of life and to install guidance to the courts in respect to the issue of status, especially where the petitioner is delibrately defrauded of his status as a freeman by legislative fiat for the purpsoe of raising a revenue and for the final purpose of absolute control by the use of a world wide numbering system, the constitution demands that his status and liberty be restored.

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NO.

IN THE

SUPPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

RICHARD J. McDONALD, Petitioner

v.

ROSCOE L. EGGER JR., Commissioner
of the Department of Internal Revenue
and
LOCKHEED CORPORATION (AKA)
Lockheed California Company
Respondents

PRAYER

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

May It Please The Court:

The petitioner, Richard J. Mc Donald, respectfully prays that a writ of

certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered on March 12, 1986.

OPINION BELOW

The Court of Appeals entered its Memorandum decision affirming the Respondent's Motion to dismiss on 12 March 1986. A copy of the memorandum is attached as Appendix A.

The Court denied Petitioner's petition for rehearing and suggestion for rehearing en banc on May 6, 1986. By order of the Court it is not to be reported. A copy of the order is attached as Appendix C.

JURISDICTION

On March 12, 1986 the Court of Appeals entered judgment affirming the respondent's motion to dismiss. (App. A) The jurisdiction of this court is invoked

under Title 28, United States Code, Section 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution

Article IV, Section 4,:

The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the Legislature, or of the executive (when the Legislature cannot be convened) against domestic violence.

Amendment V,:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE

On March 12, 1986, a panel of the Ninth Circuit Court of Appeals denied the appeal of the dismissal of the suit alleging a conspiracy and fraud to violate the constitutional rights of Richard J. McDonald. (Memorandum Opinion Appendix A). A timely petition for rehearing and rehearing en banc pursuant to Rule 35(d) and 40 of the Federal Rules of Appellate Procedure was filed on March 21, 1986. (Appendix B). The petition was denied on May 6, 1986. (Appendix C).

REASON FOR GRANTING THE WRIT

THIS PETITION IS AN OPPORTUNITY FOR THIS COURT TO REESTABLISH THE CONSTITUTIONAL CONCEPTS OF LIBERTY THAT WAS INSTITUTED BY OUR FOUNDING FATHERS, VOID THE USE OF CONSTRUCTIVE FRAUD THAT IS SLOWLY DESTROYING THE AMERICAN WAY OF LIFE AND TO INSTALL GUIDANCE TO THE COURTS IN RESPECT TO THE ISSUE OF STATUS, ESPECIALLY WHERE THE PETITIONER IS DELIBRATELY DEFRAUDED OF HIS STATUS AS A FREEMAN BY LEGISLATIVE FIAT FOR THE PURPOSE OF RAISING A REVENUE AND FOR THE FINAL PURPOSE OF ABSOLUTE CONTROL BY THE USE OF A WORLD WIDE NUMBERING SYSTEM THE CONSTITUTION DEMANDS THAT HIS STATUS AND LIBERTY BE RESTORED.

This is a remarkable case, in that the Petitioner is deprived of his status as a freeman through the use of coercion and fraud and is compelled to surrender his constitutional rights by mandate of law.

The Social Security Act, 71 STAT. 531, p. 630 (1935) when first approved by Congress only covered a few workplaces, the number WAS NOT to be used for identification, nor for any other purpose, nor was there a forced change of status to delibrately deprive anyone of their liberty, constitutional rights and property, in addition it was totally voluntary. Under these criteria the Act was imposed and ruled constitutional, Heverling v. Davis, 301 U.S. 619. Since that time there has been a stealthy expanding of the Social Security Act, up to and including the

voiding of the constituional guarantees established by our founding fathers by creating a nation of NUMBERED SERFS.

In Frost Trucking Co. v. R. R. Commission of California, this court established the rule that "the state may not impose conditions that compel the surrender of a constitutional right as a condition of its favor". 271 U.S. 583, 594 (1925), and this also applies equally to the Federal Government. This holding has never been overruled by this or any other court.

The petitioner is forced to obtain a social security number in order to be able to obtain any type of work as the legislature has extended the provisions of the Social Security Act to cover every type of work (thereby denying me the right to work which is

inherent in the Fifth Amendment to the Constitution). Therefore, it is mandatory, by operation of law to obtain a Social Security Number, (also known as Taxpayer Identification Number [T.I.N.]), which in turn forces the petitioner to surrender his liberty, constitutional rights and property against his will and over his objections.

This involuntary obtaining of the Social Security number has a change of status in effect from that of a freeman to that of a "taxpayer". And thus is placed within scope of the Internal Revenue code to be ruled by fear and coercion for ABSOLUTE-CONTROL and REVENUE purposes. "Acts generally lawful may become unlawful when there is an unconstitutional result." U.S. v. Reading, 226 U.S. 324, 357.

The Petitioner only wants to live, work and lead a productive life, but in order to do so He is forced "at the point of a bayonet" to obtain a Social Security Number, and is therefore punished for the rest of his life by an operation of law for obeying the law; the deprivation of his natural and fundamental rights and over 50% of his earnings, or in the alternative to become a criminal (i.e. a thief, bank robber etc.). Now this is not what the Constitution was designed to allow. Our founding fathers had set safeguards in the Constitution to protect the people from this type of governmental interference in their lives, under Article IV, Section 4 of the Constitution as it pertains to a republican form of government, and again under the right to privacy law, The

Privacy Act of 1974, Public Law 93-579.

It is also a fact that the right to work is one of major fundamental rights established by the numerous Treaties On Human Rights recently signed by the U.S. State Department. The right to work does exist in this country (USA) but, only after you are forced to surrender your constitutional rights and over 50 % of your labor as tribute for this right which is a natural and fundamental right, and guaranteed to the people by the Constitution of the Republic of the United States of America.

The petitioner has previously cancelled and rescinded all known adhesion/implied-in-law contracts on the grounds of fraud that have effected a change of status from that of a freeman by the attachment or accepting of

benefits, all such benefits that are offerred are declined, refused, and waived.

This is a special type of justiciable controversy where the factual circumstances "...could be capable of repetition, yet evading review." Roe v. Wade, 410 U.S. 113, 125, for lack of direction by this court.

It is a fact that all of the cases cited by the Ninth Circuit and the District Court each and every one are distinguished, in that each case pertains to a corporation, a business, or an acknowledged juristic "taxpayer". The Petitioner is none of these, He is a sovereign individual and a freeman under the organic Constitution as established by our founding fathers. Therefore the clarification of status is necessary and imperative to the final adjudication of

this matter. The judiciary are using a "Procrustian National mode" type of rule E.E.O.C. v. Wyoming, 75 L.Ed. 2d. 18, 47 as an automatic classification to maintain "Titles of Nobility".

As this court is well aware of there are very few freemen left in this country, and this WAS established as a nation of freemen, but it is now a nation of enfranchished "taxpayers" by force of law (Title 42, §4505, Social Security), as this classification has been well established by this and all other courts. The judiciary never refer to the citizen as a citizen, but as a taxpayer which is less than a citizen or a freeman or even an American citizen, but only as a "taxpayer", as a declaration of status of the individual. "Anything less than a freeman is a serf or a slave" Dred Scott

v. Sanford, 19 Howard 393, (1856)

The circuit courts will not address the issue of the involuntary change of status "at the point of a bayonet" to the status of "taxpayer" for the unjust enrichment of private and foreign individuals amounting to approximately $500 million dollars per day or approximately 41 cents out of every tax dollar which goes to the private coffers of the Class A stockholders of the Federal Reserve System "TAX FREE", are not accounted for, and who brought forth the idea and was instrumental in instituting the withholding of taxes, thereby creating a nation of "serfs" via legislative fiat and slowly destroying the American concept of liberty.

It is also an established fact that numerous federal and state judges

have their roots in the Federal Reserve System of Banking, this also includes the United States Attorney General, Mr. Edwin Meese Jr. Since the tentacles of the Federal Reserve have spread far and wide to maintain "titles of nobility" and to completely subjugate the petitioner and the nation by "controlling government" New York Investigative Reports, Tontine Insurance, 1905-1906, (10 Vols) (the origin of the Federal Reserve) and controlling the economy, Los Angeles Daily News, May 2, 1986, p. 23, Article by Velma Montoya Thompson, in effect operating as a defacto government for the benefit of foreign interests.

The petitioner has no other recourse as the Attorney General and the Judiciary are against the petitioner regaining the status of a freeman that

is guaranteed by the Constitution, this is almost the same situation as our founding fathers were against. Patrick Henry made the statement that most adequately describes the petitioners point of view "give me liberty or give me death" , once again this statement is brought forth for this court to hear and to resolve.

CONCLUSION

It is for the foregoing reasons and established facts, Petitioner Richard J. McDonald respectfully requests that a writ of certiorari issue to review the judgment of the Court of Appeals for the Ninth Circuit.

Dated _____

Respectfully Submitted

_____

Richard J. McDonald
6754 Clybourn #204
North Hollywood, Ca. 91606
In Pro-Per

Case No. 85-5857

IN THE

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RICHARD J. McDONALD Plaintiff-Appellant v. ROSCOE L. EGGER, JR, Commissioner of Internal Revenue, and Lockheed Corporation Defendant-Appellees	MEMORANDUM*

Appeal from the United States District Court for the Central District of California
Alicemarie H. Stotler,
District Judge, Presiding **

Before: GOODWIN, WALLACE and KOZINSKI
Circuit Judges

Richard McDonald appeals the dismissal of his suit against Roscoe L.

*This disposition is not appropiate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Cir. R. 21.

Egger, Jr., the Commissioner of Internal Revenue, and Lockheed Corporation, his former employer, for an alleged conspiracy to violate his constitutional rights by forcing him to pay taxes.

Facts

Lockheed hired McDonald in June 1978, and, as a condition of employment had him submit a W-4 for for social security withholding tax. After being audited by the IRS, McDonald filed a new W-4 claiming exemptions that the IRS subsequently found fraudlent. McDor d was then fined in an IRS adminstrative procedure.

On January 30, 1985, McDonald sued Lockheed and Egger in district court,

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** The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a) and Ninth Cir. R. 3(f)

claiming that the withholding tax violated his constitutional rights. He asserted that the defendents, acting under color of law, had conspired to subject him to an unconstitutional system of taxation. He requested tha the district court order refund of taxes he paid since 1978 and to grant him immunity from future taxation. He also asked for $25,000 to cover the costs of his case.

Pursuant to Local Rule 7.11, the district courts dismissed the complaint without oral argument on April 3, 1985. McDonald moved for reconsideration, which the court denied on April 30. A timely appeal was filed on May 9, 1985. Lockheed has moved for reasonable attorney's fees and double costs.

APPENDIX A

Discussion

1. McDonald's attempt to enjoin withholding of taxes from his salary is barred by the Anti-Injunction Act which provides that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person...." 26 U.S.C § 7421(a). This prohibition, which has been in effect since 1867, Bob Jones University v. Simon, 416 U.S. 725, 731 n.6 (1973), is frequently applied to tax protests such as McDonald's. Maxfield v. United States Postal Service, 752 F. 2d. 433 (9th Cir. 1984); Stonecipher v. Bray, 653 F.2d. 398, 400-01 (9th Cir. 1981), cert.denied, 454 U.S. 1154 (1982); Edgar v. Inland Steel Co., 744 F.2d. 1276 n.1 (7th Cir. 1984).

There is only one exception to the Anti-Injunction Act: where the taxpayer

their tax refund claims with the Secretary of the Treasury before bringing a refund suit in district court. 26 U.S.C. §7422(a). This requirement is jurisdictional. Bear Valley Mutual Water Co. v. Riddell, 493 F.2d. 948, 951 (9th Cir. 1974). McDonald has filed no claim with the Secretary and therefore may not maintain a refund suit.

3. McDonald's claim against Lockheed for withholding taxes from his salary is also without merit. Lockheed is required by 26 U.S.C. §3402(a)(1) to follow IRS Directives, Maxfield, 752 F.2d at 434, and, pursuant to 26 U.S.C. §3403, cannot be sued for complying with them. Maxfield, 752 F.2d. at 434.

4. Sanctions against McDonald are appropiate because this meritless appeal has imposed an unjustified burden on the court and on appellees. See Gattuso v. Pecorella, 733 F.2d. 709 (9th Cir. 1984).

will suffer irreparable harm if the tax is not enjoined and the government cannot, under any circumstances, ultimately prevail. Enochs v. Williams Packing Co., 370 U.S. 1, 7 (1962). This exception does not apply here because the government is plainly right. McDonald argues that his wages are not subject to taxation because both the federal reserve system and withholding taxes are unconstitutional. However, the legality of the federal reserve system, see Callow v. Amerace Corp., 681 F.2d 1242 (9th Cir. 1982), and of the withholding tax, see Maxfield, 752 F.2d. at 434, is settled law and McDonald's constitutional claim is grounded in nothing more than his philosophical assertation.

2. The district court lacks jurisdiction over McDonald's claim for a refund of all taxes withheld from his income since 1978. Taxpayers must file

Despite overwhelming authority to the contrary, McDonald argues that withholding taxes violate his constitutional rights. The district court, dismissing the complaint, declared the claims frivolous, citing Maxfield, 752 F.2d. at 434. In a separate case brought by McDonald in state court to enjoin Lockheed from withholding taxes from his salary, the California Court of Appeal found McDonald's contentions frivolous and assessed costs against him. Appellant had ample reason to know that his appeal here would be found frivolous as well.

McDonald's appeal placed a particularly unwarranted burden on Lockheed. However, inartfully formulated, his real quarrel was with the government, not his former employer. Lockheed clearly lacked discretion in the matter, and for McDonald to harass

another private party with repeated lawsuits to protest governmental policies is entirely improper as well as unfair. Furthermore, "[m]eritless appeals of the nature are becoming increasingly burdensome on the federal court system." Edwards v. Commissioner, 680 F.2d. 1268, 1271 (9th Cir. 1982). McDonald is therefore assessed $1,000 in attorney's fees, to be paid to appellee Lockheed.

Affirmed.

APPENDIX B

Case No. 85-5857

IN THE

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RICHARD J. McDONALD Plaintiff-Appellant v. ROSCOE L. EGGER, JR, Commissioner of Internal Revenue, and Lockheed Corporation Defendant-Appellees.	D.C. No. CV 85-0702-AHS PETITION FOR REHEARING EN BANC

COMES NOW THE PETITIONER WHO PETITIONS THE COURT FOR A REHEARING EN BANC.

The Petitioner Richard J. McDonald states that in his judgment it is apparent that the court has overlooked two (2) important aspects of the law in this case. Therefore the Petitioner requests a rehearing en banc to decide these issues of fact and law.

1. The issue of STATUS has not been addressed by the court. The determination of status is necessary and imperative to the final adjudication of this matter, and has apparently been overlooked by the court. (Reply Brief for Appellant p.9). It is a fact of law that in order to be subject to a excise tax (private law) there must be a nexus, in effect to change the status from one type of individual to another type (juristic person). The nexus does not exist in the case before the court. This of course, must be voluntary without any element of fraud or deception being present. This also includes fictions of law as the court has apparently taken judicial notice of. These fictions of law have been challenged and this therefore creates the question:

"Can the Legislative Branch with the

assent of the Executive Branch abrogate the rights guaranteed by the Constitution as established by our Founding Fathers, by changing the status of the Petitioner from that of a freeman to that of an enfranchised -juristic person by the utilization of entrapment, fraud, and deception for the purpose of raising a revenue for the unjust enrichment of private individuals, and relief will not be granted by the judiciary?"

2. The Fact that the Appellee Lockheed did take 100% of the Petitioner's wages was also overlooked and not addressed by the court, this is in violation of 26 U.S.C. §6334(d)(1)(A). This is also against the principles as set forth by the U.S. Supreme Court and by this Court.

Respectfully Submitted

Dated 21 March 1986

/s/Richard J. McDonald

Richard J. McDonald

In Pro. Per.

APPENDIX C

Case No. 85-5857

IN THE

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RICHARD J. McDONALD Plaintiff-Appellant v. ROSCOE L. EGGER, JR, Defendant-Appellees.	D.C. No. CV 85-0702-AHS ORDER

Before: GOODWIN, WALLACE and KOZINSKI, Circuit Judges.

The panel as constituted in the above case, has voted to deny the petition for rehearing and reject the en banc suggestion.

The full court has been advised of the suggestion for en banc rehearing, and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P 35(b).

The petition for rehearing is denied and the suggestion for a rehearing en banc is rejected.

FILED May 6, 1986

APPENDIX D

No.

IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM 1986

RICHARD J. McDONALD, Petitioner

v.

ROSCOE L. EGGER, JR.,
Commissioner of Internal Revenue
and LOCKHEED CORPORATION
Respondents

CERTIFICATE OF SERVICE

I, Richard J. McDonald, the petitioner in this cause, certify:

That I have served three (3) copies of the Petition for Writ of Certiorari on counsels for the respondents by depositing same in a United States Post Office mail box at North Hollywood, California, 91606, on 18th day of July

1986, with first class postage prepaid and with the envelope addressed as follows:

Glenn L. Archer
Michael L. Paup
U.S. Attorney's Office
U.S. Department of Justice
Tax Division
Washington, D.C. 20530

Benjamin George Williams, Esq.
Paul A. Silver, Esq.
Amy B. Lawrence, Esq.
10880 Wilshire Blvd. Suite 1900
Los Angeles, Ca. 90024-4173

The Solicitor General
Department of Justice
Washington, D.C. 20530

(2) The above named parties are the only parties required to be served.

(3) I further state to the best of my knowledge that the court's copies of these documents were enclosed in an package, properly addressed to the Clerk of this Court, and that said package was deposited in the United States Mail at

North Hollywood, California, with first class postage prepaid on the 18th day of July, 1986, which is within the permitted time of filing.

Richard J. McDonald
6754 Clybourn #204
North Hollywood, CA
91606

State of California
County of Los Angeles
On July 16, 1986, before me, the undersigned personally appeared RICHARD J. McDONALD

proved to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

Signature Vilma M. Crawford

OFFICIAL SEAL
VILMA M CRAWFORD
NOTARY PUBLIC - CALIFORNIA
LOS ANGELES COUNTY
My comm. expires DEC 8, 1988

BEST A

VAILABLE COPY

Supreme Court, U.S.
FILED
JUL 30 1986
JOSEPH F. SPANIOL, JR.
CLERK

NO. 86-65

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OCTOBER TERM, 1986

RICHARD J. McDONALD, Petitioner,

v.

ROSCOE L. EGGER JR., Commissioner of the Department of Internal Revenue; and
LOCKHEED CORPORATION (AKA)
Lockheed California Company
Respondents

SUPPLEMENTAL APPENDIX

RICHARD J. McDONALD
6754 Clybourn #204
North Hollywood, Ca. 91606
Tel. (818) 761-7697
IN PROPRIA PERSONA

APPENDIX E

Case NO. 85-0702 AHS (Mcx)

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

RICHARD J. McDONALD Plaintiff v. ROSCOE EGGER JR., Commissioner of Internal Revenue Service and LOCKHEED Corporation, aka Lockheed California Company Defendents	ORDER DISMISSING COMPLAINT FOR WANT OF SUBJECT MATTER JURISDICTION AND DENYING DEFENDENT'S REQUESTS FOR ATTORNEY'S FEES OR OTHER SANCTIONS

Cn January 30, 1985 Richard McDonald Filed a complaint against Roscoe Egger Junior, as Commissioner of the Internal Revenue Service, and Lockheed Corporation ("Lockheed"), alleging a civil conspiracy to defraud McDonald and to deprive him of various of his constitutional rights in connection with collection of federal income tax from his wages. Defendent Lockheed moved on February 20, 1985 to dismiss the

complaint for want of subject matter jurisdiction and for failure to state a claim, pursuant to Rule 12(b)(1) and (6), Fed.R.Civ.P. On March 5, 1985, defendent Egger moved on similar grounds to dismiss the complaint. Each defendent also requested sanctions for plaintiff's alleged filing of a frivolous claim. The motions were set for hearing by the Court on its April 8, 1985 calendar. After reading and considering the papers submitted in support of and in opposition to the motions, the Court finds this case to be appropriate for decision without oral argument (see Local Rule 7.11) and hereby grants both motions to dismiss and denies defendent's requests for attorney's fees or other sanctions.

Plaintiff asks this Court to grant him exemption from further participation in the federal income tax system,

including "[g]ranting Plaintiff withdrawal as a right, from the Social Security System", and "[o]rdering the Internal Revenue Service to issue a written instrument stating that Plaintiff is not subject to, nor under the jurisdiction of the Internal Revenue Code by virtue of the Public Salary Tax Act." See Complaint, prayer ¶¶1-7. This the Court cannot do. Title 26 U.S.C. §7421(a) prohibits taxpayers from bringing a "suit for the purpose of restraining the assessment or collection of any tax...." This section is strictily enforced. Maxfield v. United States Postal Service, 752 F.2d 433, 434 (9th Cir. 1984). An exception to the strict rule of §7421(a) is made only where the taxpayer can show that (1) under no circumstances can the government ultimately prevail, and (2) the taxpayer will be irreparably harmed

if the injunction is not granted. Enochs v. Williams Packing & Navigation Co., 370 U.S. 1, 7 (1962). Plaintiff clearly has not satisfied the first prong of this test. His sole grounds for requesting relief is that his participation in the income tax system is coerced, and that the system is unconstitutional. These claims are frivolous. Maxfield, 752 F.2d. at 434; Edwards v. Commissioner, 680 F.2d 1268, 1270 (9th Cir. 1982).

To the extent that the complaint can be read as a suit for refund (see Complaint, prayer, ¶5), it is similarly barred. Title 26 U.S.C. §7422(a) provides:

> No suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax to have been erroneously or illegally assessed or collected...

> until a claim for refund or credit has been duly filed with the Secretary [of the Internal Revenue Service]...

Compliance with this statute is a jurisdictional prerequisite to a refund action. Bear Valley Mutual WAter Co. v. Riddell, 493 F.2d 948, 951 (9th Cir. 1974). In this case, there has been no claim for refund filed with the Secretary and there is consequently no jurisdiction in this court.

Plaintiff's action against defendent Lockheed for withholding his wages is also barred. Lockheed had no discretion but to follow I.R.S. directives under U.S.C. §3402 in withholding taxes from plaintiff's pay. Maxfield, 752 F.2d at 434. Lockheed is immune from suit for its compliance. Id.; 26 U.S.C. §3403.

Defendents' requests for attorney's fees or other sanctions are denied.

Although Lockheed asserts that it has repeatedly been forced to defend frivolous lawsuits brought by plaintiff, Lockheed has failed to proffer any evidence of a prior action. See Decl. of Edward B. Reitkopp, at ¶3 (no "Exhibit 'A'".

IT IS SO ORDERED

IT IS FURTHER ORDERED that the Clerk shall serve, by United States mail, a copy of this Order on all parties or their counsel in this action.

Dated: April 3, 1985

/s/Alicemarie H. Stotler
Alicemarie H. Stotler
United States District Judge

APPENDIX F

No.86-65

IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM 1986

RICHARD J. McDONALD, Petitioner

v.

ROSCOE L. EGGER, JR.,
Commissioner of Internal Revenue
and LOCKHEED CORPORATION
Respondents

CERTIFICATE OF SERVICE

I, Richard J. McDonald, the petitioner in this cause, certify:

That I have served three (3) copies of the Supplemental Appendix on counsels for the respondents by depositing same in a United States Post Office mail box at North Hollywood, California, 91606, on 28th day of July 1986, with first class postage prepaid and with the envelope

addressed as follows:

Glenn L. Archer
Michael L. Paup
U.S. Attorney's Office
U.S. Department of Justice
Tax Division
Washington, D.C. 20530

Benjamin George Williams, Esq.
Paul A. Silver, Esq.
Amy B. Lawrence, Esq.
10880 Wilshire Blvd. Suite 1900
Los Angeles, Ca. 90024-4173

The Solicitor General
Department of Justice
Washington, D.C. 20530

(2) The above named parties are the only parties required to be served.

(3) I further state to the best of my knowledge that the court's copies of these documents were enclosed in an package, properly addressed to the Clerk of this Court, and that said package was deposited in the United States Mail at North Hollywood, California, with first class postage prepaid on the 28th day of July, 1986, which is within the permitted

time of filing.

Richard J. McDonald
6754 Clybourn #204
North Hollywood, CA
91606

Supreme Court, U.S.
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AUG 20 1986
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CLERK

No. 86-65

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1986

RICHARD J. McDONALD,

Petitioner,

vs.

ROSCOE L. EGGER, JR., COMMISSIONER OF DEPARTMENT OF INTERNAL REVENUE; AND LOCKHEED CORPORATION (aka) LOCKHEED CALIFORNIA COMPANY,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RESPONDENT LOCKHEED'S BRIEF IN OPPOSITION

BENJAMIN GEORGE WILLIAMS, ESQ.
10880 Wilshire Boulevard, #1900
Los Angeles, California 90024
(213) 475-8825

Attorney for Respondent
LOCKHEED CORPORATION

QUESTION PRESENTED

Whether an individual taxpayer can bring suit against his former employer and the Commmission of Internal Revenue for withholding taxes from his wages?

LIST OF PARTIES

The caption of the case in this Court contains the names of all parties to the proceeding in the Court whose judgment is sought to be reviewed.

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NO. 86-65

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

RICHARD J. McDONALD,

Petitioner,

v.

ROSCOE L. EGGER, JR. COMMISSIONER
OF DEPARTMENT OF INTERNAL
REVENUE; AND
LOCKHEED CORPORATION (aka)
LOCKHEED CALIFORNIA COMPANY,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RESPONDENT LOCKHEED'S BRIEF IN OPPOSITION

Respondent, LOCKHEED, respectfully submits that McDONALD's Petition for Writ of Certiorari should be denied.

OPINIONS BELOW

The District Court entered its Order Dismissing Complaint For Want Of Subject Matter Jurisdiction and Denying Defendant's Request For Attorney's Fees Or Other Sanctions on April 3, 1985. A copy of the Order is attached as Respondent's Appendix A. It was not reported.

The District Court entered its Order Denying Plaintiff's Motion For Reconsideration of Dismissal on April 30, 1986. A copy of the Order is attached as Respondent's Appendix B.

The Court of Appeals entered its Memorandum Decision Affirming Respondent's Motion To Dismiss on March 12, 1986. A copy of the Memorandum is attached as Respondent's Appendix C. It was not reported.

The Court of Appeals entered its Order

Denying Petitioner's Petition for Rehearing and Rejecting the en banc suggestion on May 6, 1986. Petitioner's Appendix C.

STATUTES INVOLVED

1. 26 U.S.C. §3402(a)(1)

> "Except as otherwise provided in this section, every employer making payment of wages shall deduct and withhold upon such wages a tax determined in accordance with tables or computational procedures prescribed by the Secretary. Any tables or procedures subscribed under this paragraph shall - (A) apply with respect to the amount of wages paid during such periods as the Secretary may prescribe, and (B) be in such form, and provide for such amounts to be deducted and withheld, as the Secretary determines to be most appropriate to carry out the purposes of this chapter and to reflect the provisions of chapter

1 applicable to such periods."

2. 26 U.S.C. §3403

"The employer shall be liable for payment of the tax required to be deducted and withheld under this chapter, and shall not be liable to any person for the amount of any such payment."

3. 26 U.S.C. §7421(a)

"Except as provided in sections 6212(a)and (c), 6213(a), 6672(b), 6694(c), 7426(a) and (b)(1), and 7429(b), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed."

4. 26 U.S.C. §7422(a)

"No suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund

or credit has been duly filed with the Secretary or his delegate, according to the provisions of law in that regard, and the regulations of the Secretary or his delegate established in pursuance thereof."

STATEMENT OF THE CASE

The facts of the case are stated fully in the decisions of the District Court (respondent's Appendix A at pp. 15-16) and the Court of Appeals (respondent's Appendix C at pp. 27-28).

REASONS FOR DENYING PETITION

Under Supreme Court Rule 17, "A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only where there are special and important reasons therefor." McDonald's action against the

Commission of Internal Revenue Service ("the Commission") and Lockheed Corporation ("Lockheed"), his employer, does not meet any of the grounds for Supreme Court review under Supreme Court Rule 17. This is not a case where there is a conflict between decisions in the Court of Appeals, nor is it a case where there is a conflict between a Court of Appeals and a decision of a state court of last resort. Supreme Court Rule 17.1(a) and (b). This is not a case where a court of appeals departed from the accepted and usual course of judicial proceedings or sanctioned the lower court's departure from the usual course of proceedings. Supreme Court Rule 17.1(a). This is not a case where there is a conflict between two state courts on a federal question decision. Supreme Court Rule

17.1(b). This is not a case where a court has decided a federal question in conflict with the applicable decisions of this Court. Supreme Court Rule 17.1(c).

McDonald implicitly argues that this is a case of first impression, or at least different from all prior cited cases. Petition for Certiorari at p. 11. Nothing could be further from the truth. Similar if not identical lawsuits have been brought and lost by droves of taxpayers in published opinions during recent years, e.g., Maxfield v. U.S. Postal Service, 752 F.2d 433 (9th Cir. 1984); Chandler v. Perini Power Constructors, Inc., 520 F.Supp. 1152 (D.N.H. 1981); U.S. v. Roberts, 425 F.Supp. 1281 (D.C. Del. 1977); U.S. v. Annunziato, 643 F.2d 676 (9th Cir. 1981), cert. denied, 452 U.S. 966, 101 S.Ct. 3921, 69 L.Ed.2d 979; Campbell v.

Amax Coal Co., 610 F.2d 701 (10th Cir. 1979).

McDonald apparently argues that his petition addresses an important and perhaps recurring question that should be reviewed by this Court. Petition for Certiorari at p. 11. In response, Lockheed submits that this Court should deny McDonald's Petition since: (1) it is nearly impossible to identify the legal issues raised by McDonald's Petition and (2) the lower courts were plainly right in their application of federal law to this case.

Under Supreme Court Rule 21.5,

> "The failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying his petition."

It is nearly impossible to identify or

to understand "the points requiring consideration" in McDonald's Petition. Rather than presenting these points with "accuracy, brevity and clearness," McDonald makes broad, sweeping statements and quotes seemingly irrelevant passages from cases, Petition at pp. 9-14, and quotations famous orators, e.g., Patrick Henry's "Give me liberty or give me death.", Petition at p. 15.

The Court of Appeals was plainly right in finding that McDonald was barred from bringing his claim against Lockheed for withholding taxes from his salary. Respondent's Appendix C, p. 31.

McDonald's attempt to enjoin the withholding of taxes from his salary is barred by 26 U.S.C.§7421(a) which prohibits any person from bringing a "suit for the purpose of restraining the assessment or

collection of any tax..." Maxfield, 752 F.2d at 434. The Ninth Circuit pointed out to McDonald that:

> "This prohibition, which has been in effect since 1867, Bob Jones University v. Simon, 416 U.S. 725, 731 N.6 (1973), is frequently applied to tax protests such as McDonald's. Maxfield v. U.S. Postal Service, 752 F.2d 433 (9th Cir. 1984); Stonecipher v. Bray, 653 F.2d 398, 400-401 (9th Cir. 1981), cert. denied, 454 U.S. 1145 (1982); Edgar v. Inland, 744 F.2d 1276, 1277 n.1 (7th Cir. 1984)."

Respondent's Appendix C at p. 29. An exception to this prohibition is made only where the taxpayer can show that (1) under no circumstances can the government ultimately prevail, and (2) the taxpayer will be irreparably harmed if the injunction is not granted. Enochs v. William Packing & Navigation Co., 370 U.S.

1, 782 S.Ct. 1128 8 L.Ed.2d 292 (1962).

The Ninth Circuit found that:

> "This exception does not apply here because the government is plainly right. McDonald argues that his wages are not subject to taxation because both the federal reserve system and withholding taxes are unconstitutional. However, the legality of the federal reserve system, see Callow v. Amerace Corp., 681 F.2d 1242 (9th Cir. 1982), and of the withholding tax, see Maxfield, 752 F.2d at 434, is settled law and McDonald's constitutional claim is grounded in nothing more than his philosophical assertion."

Respondent's Appendix C at p. 30.

26 U.S.C. §7422(a) requires that a claim for refund be filed with the Secretary of the Treasury as a jurisdictional prerequisite to a refund action. Bear Valley Mutual Water Co. v. Riddell, 493 F.2d 948, 951 (9th Cir. 1974). The Ninth Circuit affirmed the District

Court's finding that it lacked jurisdiction over McDonald's claim for a refund of all taxes withheld from his income since 1978, since McDonald did not file a claim with the Secretary of the Treasury. Respondent's Appendix C at pp. 30-31.

McDonald's action against Lockheed for withholding taxes is barred. Lockheed has no discretion and must follow IRS directives under 26 U.S.C. §3402(a)(1), Maxfield, 752 F.2d at 434. Lockheed is immune from suit for compliance with IRS directives under 26 U.S.C. §3403. Respondent's Appendix C at p. 31, and Respondent's Appendix A at pp. 19-20. 26 U.S.C. §3403 specifically states that:

> "The employer shall be liable [to the United States] for the payment of the tax required to be deducted and withheld under this chapter, and shall not be liable to any person for the amount of any such payment." (Explanatory material in

brackets added.)

See Respondent's Appendix C at p. 31.

In awarding sanctions against McDonald for bringing a frivolous appeal, the Ninth Circuit stated that:

> "McDonald's appeal placed a particularly unwarranted burden on Lockheed. However in-artfully formulated, his real quarrel was with the government, not his former employer. Lockheed clearly lacked discretion in the matter, and for McDonald to harrass another private party with repeated lawsuits to protest governmental policies is entirely improper as well as unfair."

Respondent's Appendix C at pp. 32-33.

The Ninth Circuit obviously found no merit in McDonald's argument that it is unconstitutional to require a citizen to obtain a social security number in order to gain lawful employment (McDonald's Petition for Certiorari at p. 8) since the Ninth

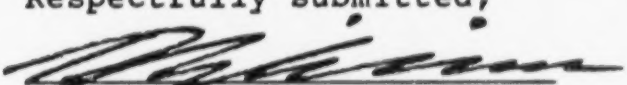
Circuit denied McDonald's Petition for Rehearing (Petitioner's Appendix C) which specifically set forth McDonald's "status" argument. Petitioner's Appendix B at pp. 2-3.

CONCLUSION AND REQUEST FOR AWARD OF REASONABLE ATTORNEY'S FEES AND DOUBLE COSTS

For the foregoing reasons Lockheed respectfully submits that the Petition for a Writ of Certiorari should be denied and that Lockheed should be awarded both reasonable attorney's fees and double costs pursuant to 28 U.S.C. §1927 and FRCP Rule 11, and Supreme Court Rule 50.7.

DATED: August 18, 1986

Respectfully submitted,



BENJAMIN GEORGE WILLIAMS
Attorney for Respondent
LOCKHEED CORPORATION

APPENDIX A

APPENDIX A

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

RICHARD J. McDONALD,	)	No. CV 85-0702 AHS (Mcx)
Plaintiff,	)	ORDER DISMISSING COMPLAINT FOR WANT OF SUBJECT MATTER JURISDICTION AND DENYING DEFENDANTS' REQUESTS FOR ATTORNEY'S FEES OR OTHER SANCTIONS
v.	)	
ROSCOE EGGER, JR., COMMISSIONER OF INTERNAL REVENUE SERVICE AND LOCKHEED CORPORATION, ALSO KNOWN AS LOCKHEED CALIFORNIA COMPANY,	)	
Defendants.	)	

On January 30, 1985, Richard McDonald filed a complaint against Roscoe Egger, Junior, as Commissioner of the Internal Revenue Service, and Lockheed Corporation ("Lockheed"), alleging a civil conspiracy to defraud McDonald and to deprive him of various of his constitutional rights in connection with collection of federal income tax from his wages. Defendant

Lockheed moved on February 20, 1985 to dismiss the complaint for want of subject matter jurisdiction and for failure to state a claim, pursuant to Rule 12(b)(1) and (6), Fed.R.P. On March 5, 1985, defendant Egger moved on similar grounds to dismiss the complaint. Each defendant also requested sanctions for plaintiff's alleged filing of a frivolous claim. The motions were set for hearing by the Court on its April 8, 1985 calendar. After reading and considering the papers submitted in support of and in opposition to the motions, the Court finds this case to be appropriate for decision without oral argument (see Local Rule 7.11) and hereby grants both motions to dismiss and denies defendants' requests for attorney's fees or other sanctions.

Plaintiff asks this Court to grant him exemption from further participation in

the federal income tax systen, including "[g]ranting Plaintiff withdrawal as a right, from the Social Security System," and "[o]rdering the Internal Revenue Service to issue a written instrument stating that Plaintiff is not subject to, nor under the jurisdiction of the Internal Revenue Code by virtue of the Public Salary Tax Act." See Complaint, prayer, ¶¶1-7. This the Court cannot do. Title 26 U.S.C. §7421(a) prohibits taxpayers from bringing a "suit for the purpose of restraining the assessment or collection of any tax . . . ." This section is strictly enforced. Maxfield v. United States Postal Service, 752 F.2d 433, 434 (9th Cir. 1984). An exception to the strict rule of §7421(a) is made only where the taxpayer can show that (1) under no circumstances can the government ultimately prevail, and (2)

the taxpayer will be irreparably harmed if the injunction is not granted. Enochs v. Williams Packing & Navigation Co., 370 U.S. 1, 7 (1962). Plaintif clearly has not satisfied the first prong of this test. His sole grounds for requesting relief is that his participation in the income tax system is coerced, and that the system is unconstitutional. These claims are frivolous. Maxfield, 752 F2d at 434; Edwards v. Commissioner, 680 F.2d 1268, 1270 (9th Cir. 1982).

To the extent that the complaint can be read as a suit for refund (see Complaint, prayer, ¶5, it is similarly barred. Title 26 U.S.C. §7422(a) provides:

> No suit or proceeding shall be maintained in any court for the recovery of any internal

> revenue tax to have been erroneously or illegally assessed or collected . . . until a claim for refund or credit has been duly filed with the Secretary [of the Internal Revenue Service]. . .

Compliance with this statute is a jurisdictional prerequisite to a refund action. Bear Valley Mutual Water Co. v. Riddell, 493 F.2d 948, 951 (9th Cir. 1974). In this case, there has been no claim for refund filed with the Secretary and there is consequently no jurisdiction in this Court.

Plaintiff's action against defendant Lockheed for withholding his wages is also barred. Lockheed had no discretion but to follow I.R.S. directives under 26 U.S.C. §3402 in withholding taxes from plaintiff's

pay. Maxfield, 752 F.2d at 434. Lockheed is immune from suit for its compliance. Id.; 26 U.S.C. §3403.

Defendants' requests for attorney's fees or other sanctions are denied. Although Lockheed asserts that it has repeatedly been forced to defend frivolous lawsuits brought by plaintiff, Lockheed has failed to proffer evidence of any prior action. See Decl. of Edward B. Reitkopp, at ¶3 (no "Exhibit 'A'" attached).

IT IS SO ORDERED.

IT IS SO FURTHER ORDERED that the Clerk shall serve, by United States mail, a copy of this Order on all parties or their counsel in this action.

Dated: April 3, 1985.

Alicemarie H. Stotler
United States District Judge

APPENDIX B

APPENDIX B

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

RICHARD J. McDONALD, Plaintiff, v. ROSCOE EGGER, JR., COMMISSIONER OF INTERNAL REVENUE SERVICE AND LOCKHEED CORPORATION, ALSO KNOWN AS LOCKHEED CALIFORNIA COMPANY, Defendants.	)	No. CV 85-0702 AHS (Mcx) ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION OF DISMISSAL

On January 30, 1985, Richard McDonald filed a complaint against Roscoe Egger, Junior, as Commissioner of the Internal Revenue Service, and Lockheed Corporation ("Lockheed"), alleging a civil conspiracy to defraud McDonald and to deprive him of various of his constitutional rights in connection with collection of federal

income tax from his wages.

Defendant Lockheed moved on February 20, 1985 to dismiss the complaint for want of subject matter jurisdiction and for failure to state a claim, pursuant to Rule 12(b)(1) and (6), Fed.R.Civ.P. On March 5, 1985, defendant Egger moved to dismiss on similar grounds. Each defendant also requested sanctions for plaintiff's alleged filing of a frivolous claim. The motions were set for hearing by the Court on its April 8, 1985 calendar. After reading and considering the papers submitted in support of and in opposition to the motions, the Court dispensed with oral argument (see Local Rule 7.11), and, on April 3, 1985, granted both motions to dismiss and denied defendants' requests for attorney's fees or other sanctions.

On April 11, 1985 plaintiff filed a motion for reconsideration of the Court's order of dismissal. After considering plaintiff's moving papers, the Court concludes that no oral argument is necessary in this matter and denies plaintiff's motion.

Plaintiff's motion fails to comport with Local Rule 7.16, which provides:

> A motion for reconsideration of the decision on any motion may be made only on the grounds of (a) a material difference in fact or law from that presented to the Court before such decision that in the exercise of reasonable diligence could not have been known to the party

> moving for reconsideration at the time of such decision, or (b) the emergence of new material facts or a change of law occurring after the time of such decision, or (c) a manifest showing of a failure to consider material facts presented to the Court before such decision. No motion for reconsideration shall in any manner repeat any oral or written argument made in support of or in opposition to the original motion.

Plaintiff has not presented any grounds on which reconsideration might be appropriate. Instead, he merely restates the substance of his opposition to the

original motions to dismiss. In granting the motions to dismiss, the Court considered fully these arguments and the facts upon which they are premised.

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the Clerk shall serve, by United States mail, a copy of this Order on counsel for all parties in this matter.

Dated: April 30, 1985.

_____
Alicemarie H. Stotler
United States District Judge

APPENDIX C

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RICHARD J. McDONALD,	)	No. 85-5857
	)	
Plaintiff,	)	D.C. No. CV 85-0702AHS
v.	)	
ROSCOE EGGER, JR., COMMISSIONER OF INTERNAL REVENUE SERVICE AND LOCKHEED CORPORATION, ALSO KNOWN AS LOCKHEED CALIFORNIA COMPANY,	)	MEMORANDUM*
Defendants.	)	

Appeal from the United States District Court for the Central District of California
Alicemarie H. Stotler, District Judge, Presiding
Submitted March 7, 1986**
Pasadena, California

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Cir. R. 21.

** The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a) and Ninth Cir. R. 3(f).

Before: GOODWIN, WALLACE and KOZINSKI, Circuit Judges.

Richard McDonald appeals the dismissal of his suit against Roscoe L. Egger, Jr., the Commissioner of Internal Revenue, and Lockheed Corporation, his former employer, for an alleged conspiracy to violate his constitutional rights by forcing him to pay taxes.

Facts

Lockheed hired McDonald in June 1978, and, as a condition of employment, had him submit a W-4 form for social security withholding tax. After being audited by the IRS, McDonald filed a new W-4 claiming exemptions that the IRS subsequently found fraudulent. McDonald was then fined in an IRS administrative procedure.

On January 30, 1985, McDonald sued Lockheed and Egger in district court,

claiming that the withholding tax violated his constitutional rights. He asserted that defendants, acting under color of law, had conspired to subject him to an unconstitutional system of taxation. He requested that the district court order refund of taxes he paid since 1978 and to grant him immunity from future taxation. He also asked for $25,000 to cover the costs of his case.

Pursuant to Local Rule 7.11, the district court dismissed the complaint without oral argument on April 3, 1985. McDonald moved for reconsideration, which the court denied on April 30. A timely appeal was filed on May 9, 1985. Lockheed has moved for reasonable attorney's fees and double costs.

Discussion

1. McDonald's attempt to enjoin

withholding of taxes from his salary is barred by the Anti-Injunction Act which provides that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person . ... . ." 26 U.S.C. §7421(a). This prohibition, which has been in effect since 1867, Bob Jones University v. Simon, 416 U.S. 725, 731 n.6 (1973), is frequently applied to tax protests such as McDonald's. Maxfield v. United States Postal Service, 752 F.2d 433 (9th Cir. 1984); Stonecipher v. Bray, 653 F.2d 398, 400-01 (9th Cir. 1981), cert. denied, 454 U.S. 1145 (1982); Edgar v. Inland Steel Co., 744 F.2d 1276, 1277 n.1 (7th Cir. 1984).

There is only one exception to the Anti-Injunction Act: where the taxpayer will suffer irreparable harm if the tax is not enjoined and the government cannot,

under any circumstances, ultimately prevail. Enochs v. Williams Packing Co., 370 U.S. 1, 7 (1962). This exception does not apply here because the government is plainly right. McDonald argues that his wages are not subject to taxation because both the federal reserve system and withholding taxes are unconstitutional. However, the legality of the federal reserve system, see Callow v. Amerace Corp., 681 F.2d 1242 (9th Cir. 1982), and of the withholding tax, see Maxfield, 752 F.2d at 434, is settled law and McDonald's constitutional claim is grounded in nothing more than his philosophical assertion.

2. The district court lacks jurisdiction over McDonald's claim for a refund of all taxes withheld from his income since 1978. Taxpayers must file their tax refund claims with the Secretary

of the Treasury before bringing a refund suit in district court. 26 U.S.C. §7422(a). This requirement is jurisdictional. Bear Valley Mutual Water Co. v. Riddell, 493 F.2d 948, 951 (9th Cir. 1974). McDonald has filed no claim with the Secretary and therefore may not maintain a refund.

3. McDonald's claim against Lockheed for withholding taxes from his salary is also without merit. Lockheed is required by U.S.C. §3402(a)(1) to follow IRS directives, Maxfield, 752 F.2d at 434, and, pursuant to 26 U.S.C. §3403, cannot be sued for complying with them. Maxfield, 752 F2d at 434.

4. Sanctions against McDonald are appropriate because this meritless appeal has imposed an unjustified burden on the court and on apellees. See Gattuso v.

Pecorella, 733 F.2d 709 (9th Cir. 1984). Despite overwhelming authority to the contrary, McDonald argues that withholding taxes violate his constitutional rights. The district court, dismissing the complaint, declared the claims frivolous, citing Maxfield, 752 F2d at 434. In a separate case brought by McDonald in state court to enjoin Lockheed from withholding taxes from his salary, the California Court of Appeal found McDonald's contentions frivolous and assessed costs against him. Appellant had ample reason to know that his appeal here would be found frivolous as well.

McDonald's appeal placed a particularly unwarranted burden on Lockheed. However inartfully formulated, his real quarrel was with the government, not his former employer. Lockheed clearly

lacked discretion in the matter, and for McDonald to harass another private party with repeated lawsuits to protest governmental policies is entirely improper as well as unfair. Furthermore, "[m]eritless appeals of this nature are becoming increasingly burdensome on the federal court system." Edwards v. Commissioner, 680 F.2d 1268, 1271 (9th Cir. 1982). McDonald is therefore assessed $1,000 in attorney's fees, to be paid to appellee Lockheed.

Affirmed.